

Nadler Warns Against Blanket Extension of Expiring PATRIOT Act Provisions

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WASHINGTON, D.C. - Today, Congressman Jerrold Nadler (D-NY), the ranking Democrat on the House Judiciary Subcommittee on the Constitution, stated his strong opposition to H.R. 514, which would extend certain expiring PATRIOT Act provisions, during debate on the House floor. He has long opposed the overbroad portions of the PATRIOT Act - including roving wiretaps, the 'lone wolf' provision, and Section 215 - and has fought for reforms to bring the Act into line with constitutional guarantees of due process.

"We must not miss the opportunity to review the PATRIOT Act in its entirety, to examine how it is working, where it has been successful, where it has failed, where it goes too far, and where it may need improvement," said Nadler. "That is the purpose of sunsets, and to extend it without review undermines that purpose. I hope to work with my colleagues on both sides of the aisle to restore our traditional respect for the right of every individual to be secure from unchecked government intrusion."

The following is his floor statement, as prepared:

"Mr. Speaker, I rise in opposition to this extension of the expiring provisions of the PATRIOT Act and the Intelligence Reform and Terrorism Prevention Act.

"I cannot support this extension when the House has done nothing to consider these provisions, or possible reforms, or even to hold a hearing or a markup. While in the past, Members have had the opportunity to receive classified briefings, we have dozens of new Members who have received no such briefings.

"The three sections scheduled to sunset are deeply troubling, and I hope that we will have the opportunity to review them carefully before they come before the House again.

"Section 215 authorizes the government to obtain 'any tangible thing' so long as the government provided a 'statement of facts showing that there are reasonable grounds to believe that the tangible things are relevant to a [foreign intelligence, international terrorism, or espionage investigation].' This would include business records, library records, tax records, educational records, or medical records.

"Before the enactment of section 215, only specific types of records were subject to the FISA orders, and the government had to show 'specific and articulable facts giving reason to believe that the person to whom the records pertain is a foreign power or an agent of a foreign power.'

"This dragnet approach allows the government to review personal records even if there is no reason to believe that the individual involved had anything to do with terrorism. This poses a threat to individual rights, in the most sensitive areas of our lives with little restraint on the government.

"Congress should either ensure that things collected with this power have a meaningful nexus to suspected terrorist activity or allow the provision to expire.

"Section 206 provides for roving wiretaps which permit the government to obtain intelligence surveillance orders that identify neither the person nor the facility to be tapped. Without the necessity to specify either the person or the

facility to be tapped, this is, for all practical purposes, a general grant of authority to wiretap anyone anywhere the government wants. There are almost no limits to this authority and no requirement that the government name a specific target. This is very akin to the old British General Writs of Assistance which engendered the first colonial outrage that led to the American Revolution.

"Section 6001 of the Intelligence Reform and Terrorism Prevention Act of 2004, the so-called 'lone wolf provision,' permits secret intelligence surveillance of non-U.S. persons who are concededly not affiliated with a foreign government or organization. It provides the government with the ability to use secret courts, and other investigative tools that are unacceptable in a domestic criminal investigation, as if we were dealing with a foreign government or entity. According to government testimony, this provision has never been used. Given the risk of this provision being used to circumvent existing protections against government intrusion, the Administration should explain why it should remain on the books.

"Surveillance of an individual who is not working with a foreign government or organization is not what we normally understand as foreign intelligence. There may be many good reasons for government to keep tabs on such people, but that is no reason to suspend all our laws under the pretext that it is a foreign intelligence operation.

"While some have argued that each of these authorities remain necessary tools in the fight against terrorism, and that they must be extended without any modifications, others have counseled careful review and modification. Some have even urged that we allow some or all of these authorities to sunset. I believe we should not miss the opportunity to review the Act in its entirety, to examine how it is working, where it has been successful, where it has failed, where it goes too far, and where it may need improvement. That is the purpose of sunsets, and to extend it without review undermines that purpose.

"There are other authorities that deserve careful review. I have introduced the National Security Letters Reform Act, which would make vital improvements to the current law in order to better protect civil liberties while ensuring that NSLs remain a useful tool in national security investigations. I hope we can work to strike that balance in a responsible and effective manner, but the record of the abuse of the NSL authority is too great for the Congress to ignore.

"I was encouraged to see some of my Republican colleagues cross the aisle to vote no on the extension last week. It shows a healthy skepticism of unrestrained government power to spy on people in the United States. That is the essence of opposition to unchecked government power. That value should not be a partisan one. I hope to work with my colleagues on both sides of the aisle to restore our traditional respect for the right of every individual to be secure from unchecked government intrusion. I hope we will be able, after this vote, to examine carefully the way these provisions have been used or abused, and to look at ways to reform the law in light of experience. That was the purpose of sunsets, and I hope we can take advantage of that opportunity."

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